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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JAYSON ANDREW RAMSEY,

Defendant and Appellant.

F070374

(Super. Ct. No. F14900734)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Alan M. Simpson, Judge.

Connex A. Thompson, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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*Before Gomes, Acting P.J., Poochigian, J. and Peña, J.

Defendant Jayson Andrew Ramsey and his wife were both charged with various crimes after they sold narcotics to undercover police officers, and a search of their home discovered significant quantities of methamphetamine and marijuana. The prosecution made a joint plea bargain offer, which Ramsey and his wife accepted. As a result of the plea agreement, Ramsey was sentenced to seven years in prison and his wife was sentenced to probation.

Appellate counsel filed a brief stating that after reviewing the record she did not identify any arguable issues. Ramsey filed a letter asserting he agreed to the plea bargain because he believed he would be placed on probation. The record does not support this assertion, and Ramsey's lengthy criminal history strongly suggests it was unrealistic to believe he would be placed on probation. Accordingly, we affirm the judgment.

FACTUAL AND PROCEDURAL SUMMARY

The first amended complaint charged Ramsey with possession of methamphetamine for the purpose of sale (Health & Saf. Code, § 11378), transportation of methamphetamine for the purpose of sale (*id.*, § 11379, subd. (a)), possession of marijuana for the purpose of sale (*id.*, § 11359), and transportation of marijuana for the purpose of sale (*id.*, § 11360, subd. (a)). The complaint also alleged Ramsey had suffered a prior conviction constituting a strike pursuant to Penal Code section 667, subdivisions (b)-(i), had served two prior prison terms within the meaning of Penal Code section 667.5, subdivision (b), and had a prior conviction for possession of methamphetamine for the purposes of sale within the meaning of Health and Safety Code section 11370.2, subdivision (c).

Before the preliminary hearing, Ramsey agreed to a plea agreement. The terms of the agreement required him to plead no contest to possession of methamphetamine for sale, admit the prior conviction for possession for sale, and admit the prior strike conviction. In exchange, the prosecution agreed to dismiss the remaining charges and enhancements. Ramsey executed a felony advisement, waiver of rights, and plea form.

This form indicated the above terms and added “Judge possibly indicate probation.” Ramsey signed and initialed the form indicating he understood and gave up his constitutional and statutory rights, and he understood the maximum sentence he faced was nine years in prison.

Prior to the sentencing hearing, defense counsel invited the trial court to dismiss Ramsey’s prior strike conviction pursuant to *People v. Superior Court (Romero)* (1996) 13 Cal.4th 497. The trial court denied the request and sentenced Ramsey to a midterm sentence of two years, doubled because of the strike prior, plus three years for the Health and Safety Code section 11370.2 enhancement.

Approximately two weeks later, defense counsel filed a motion for reconsideration of the sentence. In essence, this motion asked the trial court to sentence Ramsey to probation or, in the alternative, to permit him to withdraw his plea and proceed to trial. According to the motion, the basis for the request was the trial court implied in off-the-record conversations that it would place Ramsey on probation and allow him to enter a treatment program if he accepted the plea bargain. Since the trial court imposed a prison sentence, Ramsey believed he did not get the benefit of his bargain and was therefore entitled to the relief requested.

In denying the motion the trial court explained its reasoning:

“... I can appreciate your position. My thought is that Mr. Ramsey should not have been misled by anything. I’m sure that he wanted to believe that he would get probation, and certainly that was a possibility. But there was no commitment by the Court to place Mr. Ramsey on probation. There was no limitation on the plea form as to what sentence Mr. Ramsey would receive other than what I read a few minutes ago, quote, ‘Judge possibly indicate probation,’ close quote. There’s nothing else to indicate what sentence or range of sentence Mr. Ramsey might receive.

“In determining a sentence that a person might get, there are about seven factors, some of which may or may not apply to any given case. But, one has to determine, not in any particular order, but something to deter the same or similar conduct by the defendant in the future or by others. One has to consider the nature and circumstances of the offense to which the defendant pled or was found guilty, the severity of the circumstances of the

action or inaction. One of the seven factors that the Court can and should consider is punishment for the offense or offenses. And there are others. And certainly when the Court's considering a possible range of sentencing, which could include probation, but certainly was not guaranteed. Upon reading the report of the Probation Office in anticipation of sentencing Mr. Ramsey, one has to consider his background, his degree, or lack thereof, in terms of success on probation or parole previously. Just looking at the overall circumstances of it, as a juvenile, he has a 1990 vehicle theft, felony vehicle theft sustained petition, conviction, whatever it is. And then as a juvenile he has a misdemeanor vehicle theft sustained petition, a conviction in the Juvenile Court. And then he became an adult. In 1994 he committed an offense which he was sentenced for in 1995, that is possession of controlled substances while armed with a firearm in violation of Health and Safety Code section 11370.1, a felony. I note that the arresting agency was the Coalinga Police Department. Later in 1995, he was convicted, having been arrested again by the Coalinga Police Department, of first degree residential burglary in violation of Penal Code section 459 / 460(a). He went to CRC, California Rehabilitation Center, but was unsuccessful there. In 1999, the Court vacated CRC and criminal proceedings were reinstated, and he was given four years in prison. As that was going on, in November of 1998, Mr. Ramsey was arrested by the police department in Coalinga for receiving stolen property, a felony, and was ultimately convicted of violating Penal Code section 496(a). This conviction was February 24th of 1999. He went to prison for 32 months. He didn't do well with his post-prison rehabilitation, having had parole violations and returns to prison 2001, and then twice more in 2002. When he did get out, he was in possession of a controlled substance on April 7th of 2005 when he was arrested by the Coalinga Police Department and ultimately was convicted of violating Health and Safety Code section 11350(a), a felony. He failed to appear when he was supposed to in court. He was supposed to complete the Proposition 36 probation scheme or whatever it's called, probation. A bench warrant was issued for his arrest. He was directed to complete the Kerman Recovery Center program. He did not complete that. Probation expired unsuccessfully as is described on Page 6 of the probation report at Lines 3 and 4. And then subsequently, he had parole violations in 2005, 2009, February of 2009. Again in November of 2009. Another one in June of 2010. Another one in November of 2011. And I left out a 2007 possession of controlled substance sales conviction, new violation for sale, in violation of Health and Safety Code section 11378, the same charge to which he pled in this case. So he has at least one, and it looks like two prison priors. He has a prior serious felony, a strike, a residential burglary. He's been to prison multiple times on parole violations. He's not done well with programs that he's been sent to of different kinds, the Kerman Recovery Center, the CRC program,

Proposition 36 probation plan. Those things have not worked. And those things, that information is all reflected, as you know, in the probation report. And so it's unfortunate, but it's interesting, going back to 1990 when he was a juvenile and he was first arrested and convicted of vehicle theft, and then going to his 1995 residential burglary conviction, and virtually every other arrest that Mr. Ramsey has as reflected in the probation report, he was arrested by the Coalinga Police Department. Yet in November of 2012, according to Page 3, Line 23 of the probation report, in November of 2012, the Coalinga Police Department began a special investigation targeting narcotics dealers in the City of Coalinga. During the investigation, Jayson Ramsey and Melissa Ramsey became suspects as they were involved in direct hand-to-hand transactions with an undercover officer as well as indirect transactions conducted with an informant while witnessed by investigators.

"If those facts are true and accurate, and with that kind of a record, Mr. Ramsey and-or his wife sold narcotics directly—directly to undercover officers. With that background and those facts, that doesn't sound like it's militating towards probation. But the report goes on. At Line 1 of Page 4, as a result on March 1, 2013, Coalinga Police Department executed a narcotics search warrant on the Ramsey's home. Melissa and Jayson were apprehended in the front yard of the residence and placed into custody. The home was cleared of other occupants, none were found, and a search of the residence resumed. During the search, officers located numerous baggies of marijuana, methamphetamines, and drug paraphernalia associated with sales of narcotics. The total amount of marijuana found equaled 24.1 grams. And the total—which is less than an ounce. And the total amount of methamphetamines recovered weighed approximately 5.6 grams. A glass pipe with methamphetamine residue and burn marks was recovered, as well as packaging commonly used for drug sales, cash \$70, scales, a collapsible baton, two marijuana plants, a police scanner, a surveillance camera, and Jayson's cell phone with text messages about drug sales. Melissa and Jayson were subsequently arrested for violating Health and Safety Code section 11378.

"Under *Miranda*, Melissa admitted to Officer Alex Rouche that she sold about an eight ball, 3.5 grams of methamphetamine, per day. Melissa also admitted to using small amounts of methamphetamine. And she reported Jason uses methamphetamine daily. Melissa reported her source of legal income was receiving Welfare for her child, approximately \$300. Melissa stated that she was glad she was caught because it would motivate her to stop selling drugs and to get a legitimate job. Jason freely admitted he and Melissa sold about one quarter ounce of methamphetamine daily. Mrs. Ramsey pled in this case. She did receive probation. She did not [have] the kind of background and record that Mr. Ramsey had.

Mr. Ramsey's prior convictions as an adult or sustained petitions in juvenile delinquency proceedings are numerous and they're of serious nature. He's served more than one prior prison term. His prior performance on probation or parole was not satisfactory. He did acknowledge wrongdoing at a relatively early stage of the criminal process. But that factor is far outweighed by the circumstances in aggravation. And considering the totality of what is before the Court, I elected to follow the recommendation of the Probation Department as set forth on Page 8 at Lines 3 through 9 of the probation report and gave Mr. Ramsey a sentence, not of the aggravated term, which would have been three years doubled because of his strike to six years, plus and addition three year pursuant to Health and Safety Code section 1370.2(c), but instead gave him the middle term of two years, which was doubled to four years because of his strike, and was further enhanced by an additional three years pursuant to Health and Safety Code section 11370.2(c).

"He may have wanted to be on probation. That was certainly not a commitment that was made or—by the Court, or a promise that was extracted from the Court. What the Court indicated was that it was a possibility. That he would possibly be placed on probation. And when one looks at this type of a probation report with that history, and the facts and circumstances of this particular[] offense, with that particular history—this is not a criticism or meant to denigrate counsel in any way. I think it's unreasonable to— [¶] ... [¶] —to think that Mr. Ramsey would be put on probation with that kind of—with that kind of history."

When defense counsel pressed his point, the trial court again explained its reasoning:

"Well, let me make this point, counsel. I can see that you're doing everything you can, as you well should, to advocate as firmly as possible for your client, and that's appropriate. No one intended to trick or deceive your client or you. I think that it has been the habit and practice and custom of this Court to be very clear about someone is going to go to prison. It's a question of how long. Someone is going to be placed on probation, the terms and conditions of which are often rather vague until the time of sentencing. And sometimes counsel will ask about specific terms and conditions which they're seeking or seeking to avoid or exclude as a component of the sentence. That didn't happen here. There was no guarantee that Mr. Ramsey would receive probation. There was no guarantee what his sentence would be. There was a hope. There may have been some belief or thought. And indeed, there was a possibility, up until the point where I actually read this probation report and considered the information in it, some of which I read into the record today, and

determined that that possibility was growing smaller and smaller with every line and page of this report that I read.

“So I know that you feel passionately for your client. And you’ve been very professional. And you may be mad, although you’re not acting inappropriately or like you’re mad. You may be very disappointed. You may be upset. Whatever the words are. I’m sure that you’re disenchanted. But there was no guarantee elicited. You referred to an agreement. The agreement was that as you wrote—you wrote upon the probation report, quote, ‘Judge possibly indicate probation.’ You wrote that. Well, the Court did consider probation. But in the face of everything that was before the Court, that was not possible in this case for him. His wife did get probation. So that’s where we are. Thank you. Motion is denied.”

Ramsey filed a notice of appeal which included a request the trial court issue a certificate of probable cause. The trial court denied the request.

DISCUSSION

Appellate counsel filed a brief pursuant to *People v. Wende* (1979) 25 Cal.3d 436 asserting that after reviewing the record she could not identify any arguable issues in this appeal. By letter dated March 12, 2015, we invited Ramsey to inform us of any issues he would like us to address.

Ramsey responded to our request by letter dated May 7, 2015. In his letter, Ramsey asserts, in essence, that defense counsel assured him that if he began the rehabilitation process before the sentencing hearing, then he would be placed on probation. He also asserts the trial court “reneged” on its promise of probation when it sentenced him to prison.

We have quoted at length the trial court’s comments when it denied Ramsey’s motion for reconsideration because it unequivocally establishes the trial court never promised Ramsey would be placed on probation. The waiver of rights and plea form signed by Ramsey confirms that placing Ramsey on probation was not part of the plea agreement and that Ramsey was facing nine years in prison as a result of his plea. This form also clearly states the trial court would do nothing more than consider probation as a

possible sentence. Accordingly, Ramsey cannot prevail on a claim that the trial court failed to comply with the terms of the plea agreement.

To the extent Ramsey may be suggesting defense counsel was ineffective, the record does not support the argument. To prevail on an ineffective assistance of counsel claim, Ramsey must prove defense counsel's performance fell below an objective standard of reasonableness under prevailing professional norms, and there is a reasonable probability that had defense counsel been competent, Ramsey would have obtained a more favorable result. (*People v. Dennis* (1998) 17 Cal.4th 468, 540-541.) The record reveals defense counsel provided competent representation. Defense counsel negotiated a plea bargain reducing Ramsey's exposure from 17 years in prison to a maximum of nine years in prison. Defense counsel also obtained the trial court's agreement to consider sentencing Ramsey to probation. Considering the apparent overwhelming evidence of guilt, from an objective point of view one would have to consider the outcome very favorable for Ramsey.

It appears Ramsey's actual complaint is he believed defense counsel promised or guaranteed he would be placed on probation. While we do not know what conversations occurred between Ramsey and defense counsel, we do know the plea agreement to which Ramsey agreed, and which is clearly set forth in the record, was complied with by all the parties. We are also confident that because of Ramsey's criminal history, it is extremely unlikely any court would have granted him probation, as explained by the trial court when it denied Ramsey's motion for reconsideration. Accordingly, defense counsel was not ineffective, and Ramsey's letter does not provide any grounds for relief.

DISPOSITION

The judgment is affirmed.